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In the Supreme Court of the United States

OCTOBER TERM [redacted] 1958

No. [redacted] 52

HARRY A. HAHN,

Petitioner,

v.

ROSS ISLAND SAND & GRAVEL CO.,
a corporation,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

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In the Supreme Court
of the United States

OCTOBER TERM 1957

No. 938

HARRY A. HAHN,

Petitioner,

v.

ROSS ISLAND SAND & GRAVEL CO.,
a corporation,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

Respondent charges that petitioner makes "erroneous statements of fact or states misleading conclusions" in his petition (Resp. Br. 2). Nowhere is this accusation documented. At page 3, petitioner is accused of "a patent attempt to mislead the court." Unfounded charges of this nature should not be made. There is little doubt petitioner could obtain federal benefits. All his difficulty arises from his consistent attempt to obtain state relief. That was clearly stated at page 11 of the petition.

Following these denouncements, respondent narrates the conduct of Oregon employers who reject the Workmen's Compensation Act — how petitioner somehow could have obtained private compensation benefits— how petitioner could have entered into private negotiations with some unidentified private carrier of respondent of unknown attitude (Resp. Br. 4, 5). None of these statements have support of citation from the record— and are, in fact, wholly without support. The entire record on this subject, based upon stipulation, is (Tr. 97):

(1) respondent rejected the Compensation Act [this it did pursuant to ORS 656.022, Petition 21];

(2) respondent provided insurance to cover its liability under:

(a) the rejected Act [this liability is set by the Act in ORS 656.024, Petition 22], and

(b) the Employers' Liability Act [this liability is set by the Act in ORS 656.006, Petition 21].

What respondent now seeks further to *ex parte* tell this court is not only entirely *dehors* the record, but it is also *dehors* the Compensation Act. Correct or not [and we have no way of knowing which], the volunteered information is irrelevant.

Apparently to show that petitioner's plight is only local in nature, respondent stresses that the Oregon Compensation Act is unique and peculiar (Br. 3, 4, 8)— a contention also unsupported by citation. Petitioner pointed out in his petition (9, 13, 14) the "great varia-

tions" in compensation laws of the 48 states. Yet, in about one-half the Acts, one common feature is that such are elective (Petition 9, 10). Oregon also has an elective Act (ORS 656.022, Petition 21). Elective Acts invariably provide for actions at law with certain sanctions against rejecting negligent employers (Petition 10). So, too, in Oregon (ORS 656.024 and 656.006, Petition 22, 21). There is nothing unique about that. The Oregon Act would be peculiar if it did not so provide—also it would be unenforceable.

Provisions such as ORS 656.024 (Petition 22) and ORS 656.006 (Petition 21) are properly for the purpose of *encouraging and coercing* employers to comply with the Act. The same is true of the last part of § 905 (33 USC) of the Longshoremen's Act (Petition 20). And the same is true in the 25 elective states (Petition 10). Without such provisions, the Acts in elective states would be a farce. If an employer, for its own purposes, desires nevertheless to reject the Act, its plaintive voice cannot be heard to cry that it is unconstitutional to apply the substitute remedy *provided by the very Act it rejected* (ORS 656.024, 656.006). To allow employers the initial luxury of rejecting the elective Act, and then to escape the consequences of the substitute remedy thereafter would completely subvert the humanitarian purposes of the Compensation Acts. When respondent rejected the Act, it know it was subjecting itself to liability under ORS 656.024 and ORS 656.006. Yet, weighing the consequences, it still rejected the Act. If respondent here successfully escapes the consequences, its victory will not remain unnoticed by employers in the other 25

elective states. Workmen under such Acts, and the entire concept of liability without fault, will suffer.

If the Employers' Liability Act is as drastic a remedy as is suggested by respondent (Br. 8), it is doubtful that respondent would have voluntarily subjected itself thereto by rejecting the Compensation Act—particularly as to its land based employees. In any event, this particular action could have been successfully maintained without any aid from the Employers' Liability Act or from the removal of defenses provided in ORS 656.024. Respondent's negligence was basic. It sent petitioner, at night, up a strange ladder that was so rotten it broke away before he got to the top (Tr. 46, 47). That is reprehensible conduct under any law. Respondent's attitude in this litigation and as expressed in its brief is significant. It apparently feels it can cavalierly deny its employees all state compensation benefits, escape the substitute state remedies, and force its employees out of the state and into federal jurisdiction.

Respondent's concern expressed at page 2 over the fate of the poor working man who cannot get compensation produces a hollow echo. It was the sole and exclusive act of respondent that deprived all its workers of compensation. Now respondent wants to deprive petitioner of his substitute remedy because it will be cruel not to give him compensation!

This court has already decided that in "twilight zone" instances, state law may apply. That questioned state laws are presumed to be constitutional (see Petition 13). There is nothing inimical to that proposition in *Pope &*

Talbot v. Hawn, 346 U.S. 406, 74 S. Ct. 202, cited by respondent at page 8.

Respondent refers to this field as "legal gymnastics" (Br. 5). It may be such to respondent. It is not to petitioner, nor to the other "twilight zone" employees whose employers have *ex parte* rejected State Compensation Acts. To these employees this is not any interesting legal maneuver. Under elective compensation laws, employers may legally reject the Acts. But if they do so, it must be with the clear understanding that they are not going to be able to hide behind the U. S. Constitution when their injured employees assert the substitute or alternative remedies provided by the compensation laws. To have effective compensation laws, this is essential.

CONCLUSION

For the foregoing reasons, and for those stated in the petition, a writ of certiorari should be granted.

Respectfully submitted,

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